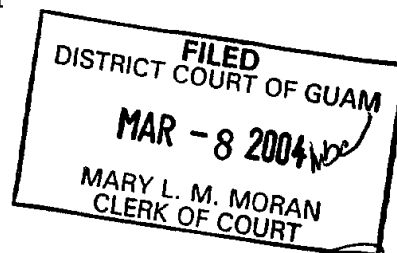


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IN THE UNITED STATES DISTRICT COURT

FOR THE

TERRITORY OF GUAM

SEAN FRANCIS SCHOOL)	CIVIL ACTION NO. 03-000038
MAFNAS,)	
)	<u>NOTICE OF MOTION AND MOTION TO</u>
)	<u>DISMISS WITHOUT LEAVE TO AMEND</u>
Plaintiff,)	<u>FILED ON BEHALF OF</u>
v.)	<u>DEFENDANT JOHN S. UNPINGCO</u>
)	
JOHN S. UNPINGCO, et al.,)	
)	
Defendants.)	

NOTICE OF MOTION

PLEASE TAKE NOTICE that this motion is submitted without a request for hearing for a decision based on the pleadings, at the discretion of the court.

1 **MOTION TO DISMISS WITHOUT LEAVE TO AMEND**

2 NOW COMES Defendant John S. Unpingco, Chief Judge for the
3 U.S. District Court for the District of Guam, through counsel,
4 and respectfully moves the Court to dismiss plaintiff's claims
5 without leave to amend, pursuant to Rule 12(b) of the Federal
6 Rules of Civil Procedure, on the following grounds. First, this
7 Court lacks subject matter jurisdiction over plaintiff's
8 purported claims against defendant Unpingco in his official
9 capacity, which are barred by sovereign immunity, and therefore
10 those claims should be dismissed pursuant to *Fed. R. Civ. P.*
11 *12(b)(1)* or *12(b)(6)*. Second, plaintiff's individual capacity
12 claims against defendant Unpingco are barred by the doctrine of
13 judicial immunity or statutory immunity, and accordingly, those
14 claims should be dismissed pursuant to *Fed. R. Civ. P. 12(b)(1)*
15 or *12(b)(6)*. Third, to the extent that plaintiff relies upon
16 events that occurred prior to June 3, 2000, his claims are time
17 barred and should be dismissed pursuant to *Fed. R. Civ. P.*
18 *12(b)(6)*. Finally, defendant Unpingco is entitled to absolute
19 immunity from this lawsuit, and thus, plaintiff's claims against
20 him should be dismissed without leave to amend.

21 In short, taking the well-pleaded facts in the complaint as
22 true for purposes of ascertaining their legal sufficiency, all of
23 plaintiff's claims against defendant Unpingco are subject to
24 dismissal without leave to amend for the above reasons.

25 //

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28 //

1 In further support of this motion, defendant Unpingco relies
2 upon the Memorandum of Points and Authorities, which is being
3 filed concurrently with this motion.

4
5 Respectfully submitted,

6 C. SALVATORE D'ALESSIO, JR.
7 Senior Trial Attorney
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11 United States Attorney
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13 BY: 
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